
UNITED STATES DISTRICT COURT**EASTERN DISTRICT OF TEXAS**

LENROY MCLEAN,

Plaintiff,

*versus*UNITED STATES OF AMERICA, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:21-CV-168

**ORDER OVERRULING OBJECTIONS AND ADOPTING
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Lenroy McLean, proceeding *pro se*, filed this civil rights action pursuant to *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), and the Federal Tort Claims Act (FTCA) against the United States of America, Michael W. Lockhart, J. Baltazar, Sonya Cole, M. R. Lewis, Cathy Cutwright, First Name Unknown (FNU) Heno, FNU Brasfield, Russell Taylor, Wanda Jones, Rodney Davis, FNU Polavarapy, FNU McGarvey, FNU Steffey, FNU Fontenot, FNU Brownfield, FNU Hanson, FNU Williams, FNU Chiles, J. Jones, Deshawn Davis, and FNU Laidled.

The court referred this matter to the Honorable Christine L. Stetson, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge. The magistrate judge recommends denying Defendant United States of America's Motion to Dismiss, or Alternatively, Motion for Summary Judgment with respect to Plaintiff's assault claim and granting the Motion with respect to the remaining FTCA claims.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record, pleadings, and all available evidence. The parties filed objections to the magistrate judge's Report and Recommendation.

The court has conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See* FED. R. CIV. P. 72(b). After careful consideration, the court concludes the objections are without merit.

Defendant contends that Plaintiff failed to state a claim of assault because he did not allege that he suffered an injury, but in his objections to the report and recommendation, Plaintiff states that he suffered a neck injury. At this stage of the proceedings, Plaintiff's allegations are sufficient to state a claim of assault under the FTCA. For the reasons stated in the magistrate judge's report and recommendation, Plaintiff failed to state a claim of false imprisonment, abuse of process, or intentional infliction of emotional distress. Further, Defendant is entitled to summary judgment with respect to the claim of negligent medical treatment because medical care at the prison is provided by an independent contractor, not government employees.

ORDER

Accordingly, the parties' objections (#66 and #67) are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct, and the report and recommendation of the magistrate judge (#61) is **ADOPTED**. Defendant's Motion to Dismiss, or Alternatively,

Motion for Summary Judgment (#47) is **DENIED** with respect to Plaintiff's assault claim and **GRANTED** with respect to the remaining FTCA claims.

SIGNED at Beaumont, Texas, this 23rd day of March, 2023.

A handwritten signature in black ink, reading "Marcia A. Crone". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE